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Arizona Corporation Commission

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AZ CORP COMMISSION
DOCKET CONTROL

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PK

Attorneys for Payson Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE COMPLAINT
OF STEVE PRAHIN,
Complainant,

DOCKET NO. W-03514A-07-0386

v.

PAYSON WATER COMPANY
Respondent.

IN THE MATTER OF THE COMPLAINT
OF REBECCA SIGETI,
Complainant,

DOCKET NO. W-03514A-08-0047

v.

PAYSON WATER COMPANY
Respondent.

**NOTICE OF FILING GRANT OF
SUMMARY JUDGMENT IN CIVIL
PROCEEDING AND MOTION TO
DISMISS**

Pursuant to Rule 12(b)(6), Ariz. R. Civ. P., Respondent Payson Water Company ("Payson Water" or "Respondent") hereby submits this Notice of Filing Grant of Summary Judgment in Civil Proceeding, and moves to dismiss the above-captioned complaints. Payson Water Company hereby incorporates the Factual Background and Discussion contained in its July 22, 2011 Motion for Order Dismissing Complaints.

FACTS SUBSEQUENT TO JULY 22, 2011 MOTION TO DISMISS

1. Complainant Steve Prahin has maintained throughout this proceeding that he is the rightful owner of water utility facilities used to serve Payson Water's customers located in the Elusive Acres and Geronimo Estates subdivisions. However, the

1 administrative law judge and Commission Staff have communicated to Mr. Prahin on
2 several occasions that the issue of ownership is not a matter properly adjudicated by the
3 Commission.

4 2. On November 14, 2011, Complainant Steve Prahin left a voicemail message
5 for Commission Staff indicating that he had turned off the water tank serving Payson
6 Water's customers located in Elusive Acres and Geronimo Estates. Consequently, by
7 November 16, 2011, the Commission was being advised by customers in Elusive Acres
8 and Geronimo Estates that they were without water service. During that time, Mr. Prahin
9 refused the Respondent access to the tank and well site, as was unable to obtain access
10 through the assistance of local law enforcement.

11 3. As a result of Mr. Prahin's actions, the Commission issued Decision No.
12 72683 on November 17, 2011, in Docket No. W-03514A-11-0412, attached hereto as
13 Exhibit 1. In Decision No. 72683, the Commission directed Payson Water to "take all
14 necessary and appropriate steps to ensure continued water service to its customers,
15 including serving as interim manager to Mr. Prahin (under the view that Mr. Prahin may
16 own the assets), and seeking resolution of this dispute."

17 4. On November 18, 2011, Payson Water filed a civil complaint against Mr.
18 Prahin in the Gila County Superior Court, requesting relief that included, among other
19 things, a declaration that the company is the rightful owner of the water facilities service
20 the Elusive Acres and Geronimo subdivisions.

21 5. On May 14, 2013, Judge Peter Cahill granted Payson Water's Motion for
22 Summary Judgment, in part, relating to the issue of ownership of the water facilities. A
23 copy of the Order is attached hereto as Exhibit 2. The Order states that "Payson Water
24 has established as a matter of law that it owns the Elusive Acres Well System pursuant to
25 a 1988 Main Extension Agreement that United Utilities, Payson Water's predecessor and
26 Mark Boroski entered into." The Order goes on to state that "Prahin's argument against

1 the validity of the Agreement, a claim that the Agreement was void from the outset, is
2 barred by the statute of limitations” and that “Payson Water has demonstrated that it is
3 entitled to summary judgment that is entitled to access to Elusive Acres and the Well
4 System.”

5 **DISCUSSION**

6 This complaint has been pending at the Commission for over six (6) years. It has
7 cost the Respondent an enormous amount of time and resources, including the cost of
8 obtaining a civil judgment against the Complainant regarding ownership rights to the
9 Elusive Acres and Geronimo Estates well system. The original basis of the complaint was
10 an allegation by Mr. Prahin concerning alleged comments made to him in a parking lot
11 after a townhall meeting held by Payson Water. The complaint also addressed issues
12 regarding water service and moratoriums on connections – issues already being addressed
13 by the Commission in Docket No. W-03541A-05-0729. Finally, Mr. Prahin advanced a
14 “takings” argument regarding the well system, and this matter has been resolved through
15 the civil action resulting in the Order granting Payson Water summary judgment.

16 It is unfortunate that Payson Water and the Commission were forced to go through
17 such great lengths to protect the water supply, and continuity of service for customers
18 located in Elusive Acres and Geronimo Estates, against the actions of Mr. Prahin. There
19 are no issues that the Commission can resolve in this proceeding based on the allegations
20 contained in the original complaint, and now that the issue concerning ownership of the
21 Elusive Acres well system has been resolved in the company’s favor, dismissing this
22 complaint is consistent with the public interest.

23 **RELIEF REQUESTED**

24 A. That the Commission issue an order:

- 25 1. Dismissing the above-captioned complaints; and
- 26 2. Finding that issues concerning the company’s Water System

1 Improvement Plan and current moratorium on new connections is
2 properly addressed in Docket No. W-03541A-05-0729; and

3 B. That the Commission grant any other relief necessary to serve the public
4 interest.

5 RESPECTFULLY SUBMITTED this 17th day of June 2013.

6 FENNEMORE CRAIG, P.C.

7
8 By 
9 Patrick J. Black
10 Attorneys for Payson Water Company

11
12 **ORIGINAL** and 13 copies filed this
13 17th day of June, 2013, with:

14 Docket Control
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 **COPY** of the foregoing hand-delivered
19 this 17th day of July, 2013 to:

20 Dwight Nodes, Chief Assistant Administrative Law Judge
21 Hearing Division
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25 Steve Olea, Director
26 Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Bridget Humphrey
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 **COPY** of the foregoing mailed
2 this 17th day of June, 2013 to:

3 Steve P. Prahin
4 HC 7, Box 452
5 Payson,. Arizona 85541

6 Rebecca M. Sigeti
7 HC 7, Box 451
8 Payson, Arizona 85541

9 James E. Dunne
10 119 West Third Place
11 Mesa, Arizona 85201

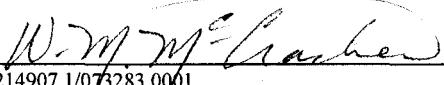
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EXHIBIT 1



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

NOV 17 2011

Gary Pierce, Chairman
Bob Stump
Sandra D. Kennedy
Brenda Burns

DOCKETED BY

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IN THE MATTER OF STAFF'S
REQUEST FOR COMMISSION RELIEF
TO ORDER PAYSON WATER
COMPANY AND STEVE PRAHIN TO
ENSURE CONTINUED WATER
SERVICE TO CUSTOMERS

DOCKET NO. W-03514A-11-0412

DECISION NO. 72683

ORDER

BY THE COMMISSION:

Having been fully advised of the circumstances in this matter the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On August 18, 1989, the Commission approved a Main Extension Agreement entered into between United Utilities and Elusive Acres. On June 19, 1998, the Commission issued Decision No. 60972 in Docket Nos. W-03514A-98-0073, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, and 04, which transferred the Certificate of Convenience and Necessity of United Utilities to Brook Water. L.L.C., including that of Payson Water Company (the "Company"). The Company provides service to two subdivisions -- Geronimo Estates and Elusive Acres -- in Gila County, Arizona.

2. On June 25, 2007, Steve Prahin filed a formal complaint against the Company, in Docket No. W-03514A-07-0386, regarding water service issues. That matter is still pending before the Commission. Although that Complaint did not address ownership of certain plant infrastructure, during the course of that proceeding, Mr. Prahin has asserted that he purchased the parcel or parcels of land on which the well(s) serving Elusive Acres and/or Geronimo Estates are located at a tax sale and that he thereby acquired ownership of the well(s), tank(s) and other plant infrastructure located on the subject parcel(s).

3. By contrast, the Company asserts that it owns that infrastructure pursuant to the Main

1 Extension Agreement and Decision No. 60972, above.

2 4. As a result, a dispute currently exists as to who owns the well and other physical
3 assets located on the relevant parcel.

4 5. These assets are currently used and useful to provide water service within the
5 Company's service area. These assets are necessary to ensure continued water service and are
6 therefore dedicated to public use.

7 6. Mr. Prahin has stated on a number of occasions that he would shut off service to the
8 Company's customers and, on November 14, 2011, left a message for Commission Staff indicating
9 that he had turned off the water tank and that there would be no water in the canyon. Beginning
10 November 16, 2011, the Commission has been advised by customers of Elusive Acres and Geronimo
11 Estates that they are without water service.

12 7. Mr. Prahin has refused the Company access to the tank and well, and the Company
13 has been unable to obtain access through the assistance of law enforcement.

14 8. Due to the actions of Mr. Prahin, the Company is unable to provide and maintain
15 service to water customers absent action by this Commission.

16 9. Mr. Prahin has refused to provide water service to customers in Elusive Acres.

17 10. To the extent that Mr. Prahin has any alleged ownership interest in plant that is
18 dedicated to public use, he thereby becomes a public service corporation in fact, subject to the
19 Commission's jurisdiction, and it is necessary to appoint an interim manager to operate the plant.
20 Payson Water Company is hereby designated as said interim manager during the pendency of this
21 ongoing dispute.

22 11. Because Mr. Prahin has interfered with continued water service to the public, it is
23 necessary to appoint an interim manager to operate that plant. Payson Water Company is hereby
24 designated as said interim manager during the pendency of this ongoing dispute.

25 12. Because Payson Water Company holds a CC&N, and because Payson Water
26 Company also claims to own the plant, it is a public service corporation subject to the Commission's
27 jurisdiction.

28 13. The Company is hereby required to take all necessary and appropriate steps to ensure

1 continued water service to its customers, including serving as interim manager to Mr. Prahin (under
2 the view that Mr. Prahin may own the assets), and seeking resolution of this dispute.

3 14. The Company shall docket a report with the Commission that provides a status update
4 on this matter within two weeks from the date of this order. This report shall discuss whether the
5 Company has considered seeking a judicial resolution to this dispute. If the Company concludes that
6 seeking judicial relief is not in its best interests, or its customers' best interests, it shall explain the
7 rationale for that conclusion in its report.

8 CONCLUSIONS OF LAW

9 1. The Commission has jurisdiction over the Company, Steve Prahin and the subject
10 matter contained herein pursuant to Article XV of the Arizona Constitution and Title 40 of the
11 Arizona Revised Statutes.

12 2. Notice of the proceeding has been given in the manner prescribed by law.

13 3. The Commission finds that that an emergency situation exists which necessitates the
14 Commission's expedited action.

15 4. The owner of the plant infrastructure, whether it is the Company or Mr. Prahin, is a
16 public service corporation as defined in Article XV of the Arizona Constitution, and as such, is
17 subject to the Commission's jurisdiction.

18 5. It is in the public interest to grant the relief described in Findings of Fact 10 through
19 14 on an expedited basis.

20 ORDER

21 **IT IS THEREFORE ORDERED** that, to the extent that Mr. Prahin has any alleged
22 ownership interest in plant that is dedicated to public use, he thereby becomes a public service
23 corporation in fact, subject to the Commission's jurisdiction.

24 **IT IS FURTHER ORDERED** that, due to Mr. Prahin's interference with continued water
25 service to the public, it is necessary to appoint an interim manager to operate that plant. Payson
26 Water Company is hereby designated as said interim manager during the pendency of this ongoing
27 dispute.

28 **IT IS FURTHER ORDERED** that, inasmuch as Payson Water Company holds a CC&N

1 and also claims to own the plant, it is a public service corporation subject to the Commission's
2 jurisdiction.

3 **IT IS FURTHER ORDERED** that the Company is hereby required to take all necessary and
4 appropriate steps to ensure continued water service to its customers, including serving as interim
5 manager to Mr. Prahin (under the view that Mr. Prahin may own the assets), and seeking resolution
6 of this dispute.

7 **IT IS FURTHER ORDERED** that the Company shall docket a report with the Commission
8 that provides a status update on this matter within two weeks from the date of this order. This report
9 shall discuss whether the Company has considered seeking a judicial resolution to this dispute. If the
10 Company concludes that seeking judicial relief is not in its best interests, or its customers' best
11 interests, it shall explain the rationale for that conclusion in its report.

12 **IT IS FURTHER ORDERED** that water service shall be restored to the customers of
13 Payson Water Company served by the well and tank located on the subject real property forthwith,
14 subject to any existing tariffs of Payson Water Company, and that Payson Water Company shall be
15 granted access to all water system facilities located in the affected areas.

16 **IT IS FURTHER ORDERED** that Steve Prahin is enjoined from interfering with the
17 operation of the well, tank and other plant infrastructure which may be located on any property in
18 which he has an interest and from prohibiting the Company or its employees from accessing the plant
19 infrastructure.

20 **IT IS FURTHER ORDERED** that if Steve Prahin does not cooperate with the interim
21 operator, Payson Water Company, and allow access to all water system facilities, the Commission
22 may impose sanctions against Steve Prahin.

23 **IT IS FURTHER ORDERED** that this decision shall be effective immediately.
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BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

Gay Davis
CHAIRMAN

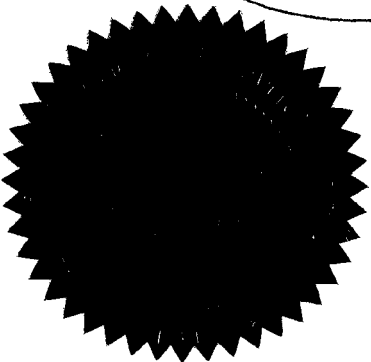
Paul Burns
COMMISSIONER

Stephen D. Hancock
COMMISSIONER

Paul Newman
COMMISSIONER

EXCUSED
COMM. BURNS

COMMISSIONER



IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this 17th day of November, 2011.

Ernest G. Johnson
ERNEST G. JOHNSON
Executive Director

DISSENT: _____

DISSENT: _____

EXHIBIT 2

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MAY 14 2013

ARIZONA SUPERIOR COURT

2013 MAY 10 PM 4:01

ACTION _____

GILA COUNTY

BY _____ DEPUTY

Date: 5/10/2013

PETER J. CAHILL, JUDGE

Division One

K. ST. LAURENT

Judicial Assistant

PAYSON WATER COMPANY,

Plaintiff,

v.

STEVEN PRAHIN and JANE DOE
PRAHIN,

Defendants.

CV201100389

ORDERS GRANTING and DENYING SUMMARY RELIEF

This matter is before the court on Plaintiff Payson Water Company's Motion for Summary Judgment and Defendant Prahin's Cross-Motion for Summary Judgment. The motions, responses, and replies were considered along with the statements of fact. Oral argument was heard April 9, 2013.

This matter involves a dispute over the ownership of a well, reserve tank and appurtenances located on Tracts A, B, and C (together "the Tracts") in Elusive Acres, a subdivision outside of Payson, Arizona. The well is currently the primary water source for two subdivisions, Elusive Acres and Geronimo Estates. Payson Water is the operator of the System. Prahin owns the Tracts. The well is on Tract B. The storage tank is on tract A.

Payson Water has established as a matter of law that it owns the Elusive Acres Well System pursuant to a 1988 Main Extension Agreement that United Utilities, Payson Water's predecessor and a Mark Boroski entered into. Prahin may indeed own title to the underlying real property now but, because of the Agreement, he never did receive title to the Well System from Boroski. This is because Boroski had earlier transferred title of the well system to United.

Prahn's argument against the validity of the Agreement, a claim that the Agreement was void from the outset, is barred by the statute of limitations.

Prahn challenges here the unambiguous language of the Agreement by implying that Boroski did not fully agree or understand its terms. However, the terms of the Agreement are clear and unambiguous language and as a result, Prahin's attempt to introduce evidence of Boroski's subjective intent when signing the Agreement and evidence regarding the oral negotiations are inadmissible parol evidence.

In addition, Payson Water has demonstrated that it is entitled to summary judgment that it is entitled to access to Elusive Acres and the Well System.

Accordingly, Payson Water is entitled to judgment as a matter of law on the issues addressed above and therefore its Motion for Summary Judgment is **GRANTED** in part.

With regard to any claim by Payson Water that it is entitled as a matter of law on a Rule 56 motion to entry of specific damage awards, a jury will have to decide what are clearly disputed facts: the amount of any such award. Therefore,

To the extent that Payson Water seeks preemptory relief on its damage claims, the motion is **DENIED**.

cc:

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Office Distribution:

COURT ADMINISTRATOR

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